

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

OPTIMUM POWER SOLUTIONS LLC, a
Texas Limited Liability Company,

Plaintiff,

vs.

PANASONIC CORPORATION OF NORTH
AMERICA, a Delaware Corporation,

Defendant.

Case No.: 3:12-cv-03123 SI

**STIPULATION AND [PROPOSED]
PROTECTIVE ORDER**

STIPULATION

Disclosure and discovery in this action are likely to involve production of confidential, proprietary or private information for which special protection from public disclosure and from use for any purpose other than prosecution of this litigation may be warranted. Accordingly, to expedite the flow of discovery material, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that only materials the parties are entitled to keep confidential are subject to such treatment, and to ensure that the parties are permitted reasonably necessary uses of such materials in

1 preparation for and in the conduct of trial, pursuant to Federal Rule of Civil Procedure 26(c), the
 2 parties hereby stipulate to and petition the court to enter the following proposed Protective Order.

3 **[PROPOSED] PROTECTIVE ORDER**

4 **A. Definitions**

5 1. “Party”: any party to this action, including all of its officers, directors, employees,
 6 consultants, retained experts, and outside counsel (and their support staff).

7 2. “Material”: all information, testimony, documents and things produced, served or
 8 otherwise provided in this action by the Parties or by non-parties.

9 3. “CONFIDENTIAL Material”: information, documents, and things the Designating
 10 Party believes in good faith comprises or includes confidential, proprietary and/or trade secrets or
 11 other confidential research, development, or sensitive commercial information that is not generally
 12 known to others, and which the Designating Party (i) would not normally reveal to third parties
 13 except in confidence or has undertaken with others to maintain in confidence, or (ii) believes in
 14 good faith is protected by a right to privacy under federal or state law or any other applicable
 15 privilege or right related to confidentiality or privacy.

16 4. “ATTORNEYS’ EYES ONLY Material”: information, documents, and things the
 17 Designating Party believes in good faith is not generally known to others and has significant
 18 competitive value such that unrestricted disclosure to others would create a substantial risk of
 19 serious injury, and which the Designating Party (i) would not normally reveal to third parties except
 20 in confidence or has undertaken with others to maintain in confidence, or (ii) believes in good faith
 21 is significantly sensitive and protected by a right to privacy under federal or state law or any other
 22 applicable privilege or right related to confidentiality or privacy.

23 5. “OUTSIDE COUNSEL RESTRICTED Material”: Material meeting the
 24 requirements for ATTORNEYS EYES ONLY Material, as set forth in Paragraph 4 above, which
 25 the Designating Party reasonably believes contains such highly sensitive information that its
 26 disclosure to any employees of any Party, including Litigation Managers, would present a
 27 substantial risk of harm to the competitive position of the Designating Party.

1 The designation is reserved for information that constitutes proprietary financial, technical,
 2 competitive, or commercially sensitive information that the Designating Party maintains as highly
 3 confidential in its business, including but not limited to information relating to future products,
 4 strategic plans, non-public financial data, documents that would reveal trade secrets, licensing
 5 documents or licensing communications, and settlement agreements or settlement communications,
 6 the disclosure of which is likely to cause harm to the competitive position of the Designating Party.

7 This designation includes Material that the Designating Party believes in good faith is not
 8 generally known to others and has significant competitive value such that unrestricted disclosure to
 9 others would create a substantial risk of serious injury, and which the Designating Party (i) would
 10 not normally reveal to third parties except in confidence or has undertaken with others to maintain
 11 in confidence, or (ii) believes in good faith is significantly sensitive and protected by a right to
 12 privacy under federal or state law or any other applicable privilege or right related to confidentiality
 13 or privacy. This designation also includes Material obtained from a non-party pursuant to a current
 14 Nondisclosure Agreement (“NDA”), unless the non-party permits a different designation in writing.
 15 **OUTSIDE COUNSEL RESTRICTED** Material shall include all Material referring or relating to the
 16 foregoing, including but not limited to copies, summaries, and abstracts of the foregoing. The
 17 parties may designate confidential technical information as Outside Counsel Restricted Material to
 18 prevent its disclosure to Litigation Managers of the other parties.

19 6. “Encrypted”: encrypted using PGP® encryption, with a passphrase of at least 20
 20 characters in length and using the Advanced Encryption Standard (AES) cipher option, unless a
 21 Designating Party indicates that its materials may be encrypted using other private-key encryption
 22 techniques, in which case a Receiving Party may, but is not required to, use such other techniques
 23 with respect to that Designating Party’s materials. Where encryption is required for transmission of
 24 a document by electronic means, the encryption must also be end-to-end (i.e., the received
 25 document must be Encrypted when received on the recipient’s computer. Nothing in this Protective
 26 Order, however, shall require Designated Material hosted by a Professional Vendor to be Encrypted

1 pursuant to this paragraph when viewed by an authenticated authorized recipient over a secure (end-
 2 to-end), encrypted Internet connection.

3 7. “Producing Party”: a Party or non-party that produces Material in this action.

4 8. “Receiving Party”: a Party that receives Material from a Producing Party.

5 9. “Designated Material”: Material that is designated “CONFIDENTIAL”,
 6 “ATTORNEYS’ EYES ONLY”, or “OUTSIDE COUNSEL RESTRICTED” under this Order.

7 10. “Designating Party”: a Party or non-party that designates information, documents or
 8 things that it produces in disclosures or in responses to discovery as “CONFIDENTIAL”,
 9 “ATTORNEYS’ EYES ONLY”, or “OUTSIDE COUNSEL RESTRICTED”.

10 11. “Counsel of Record”: (i) outside counsel who appear on the pleadings as counsel for
 11 a Party, (ii) partners, associates, and employees of such outside counsel to whom it is reasonably
 12 necessary to disclose the information for this litigation, including supporting personnel employed by
 13 the attorneys, such as paralegals, legal translators, legal secretaries, legal clerks and shorthand
 14 reporters, (iii) independent legal translators retained to translate in connection with this action, or
 15 independent shorthand reporters retained to record and transcribe testimony in connection with this
 16 action, or (iv) a Mediator(s) appointed by the Court and his or her partners, associates, and
 17 employees to whom it is reasonably necessary to disclose the information for this litigation.

18 12. “Litigation Manager”: an individual who is an employee in a legal department of a
 19 Party named in the original Complaint in this action or a subsequently added Party (including
 20 supporting personnel employed by the legal department of such Party, such as paralegals, legal
 21 translators, legal secretaries, legal clerks, and shorthand reporters), whose responsibilities include
 22 overseeing this litigation, and who from the date of entry of this Protective Order through a period
 23 of one year following either (a) the complete resolution of the litigation through entry of a final,
 24 non-appealable judgment or for which appeal has been exhausted, or (b) complete settlement of all
 25 claims against the Party who designated the Litigation Manager, shall be subject to the
 26 PROSECUTION BAR if the Litigation Manager(s) receives any Material labeled “SUBJECT TO
 27 PROSECUTION BAR” as provided for in Section F below.

1 Each Party may designate a maximum of three Litigation Managers. A Party may designate
 2 a person as a Litigation Manager by having the person sign the "Litigation Manager
 3 Acknowledgement and Agreement To Be Bound By Protective Order" attached hereto as Exhibit C
 4 and serving that document on all Parties. If necessary, a Party may replace a designated Litigation
 5 Manager with a new Litigation Manager by serving the appropriate undertakings described in
 6 Paragraphs 23 (c) and (d). In this event, the replaced Litigation Manager shall destroy all
 7 designated materials in his or her possession or return them to Counsel of Record for the Party and
 8 shall no longer be permitted to receive designated materials as a Litigation Manager pursuant to this
 9 Protective Order.

10 To the extent any Defendant designates a Litigation Manager who is not an employee of a
 11 current Party to this action, such Litigation Manager shall not receive any Designated Material of
 12 another Defendant based on his/her status as a Litigation Manager pursuant to this Protective Order.

13 13. "Outside Consultant": a person with specialized knowledge or experience in a matter
 14 pertinent to the litigation who has been retained by a Party or Counsel of Record to serve as an
 15 expert witness or as a consultant in this action and who is not a current employee of a Party or a
 16 competitor of a party, who, at the time of retention, is not anticipated to become an employee of a
 17 Party or of a competitor of a party.

18 14. "Professional Vendors": persons or entities located in the United States that provide
 19 litigation support services (e.g., photocopying; organizing, storing, or retrieval of data in any form
 20 or medium; videotaping; translating; designing and preparing exhibits, graphics, or demonstrations;
 21 etc.) and their employees and subcontractors. This definition includes a professional jury or trial
 22 consultant retained in connection with this litigation and mock jurors retained by such a consultant
 23 to assist them in their work. Professional Vendors do not include consultants who fall within the
 24 definition of Outside Consultant.

25 **B. Scope**

26 15. The protections conferred by this Order cover not only Designated Material (as
 27 defined above), but also any information copied or extracted therefrom, as well as all copies,

1 excerpts, summaries, or compilations thereof. Nothing herein shall alter or change in any way the
 2 discovery provisions of the Federal Rules of Civil Procedure or the Court's deadlines provided in
 3 the Docket Control Order and Discovery Order. Identification of any individual pursuant to this
 4 Protective Order does not make that individual available for deposition or any other form of
 5 discovery outside of the restrictions and procedures of the Federal Rules of Civil Procedure, the
 6 Rules of Practice for Patent Cases before the Northern District of California (cited as "P.R."), and
 7 the Court's deadlines provided in the Docket Control Order and Discovery Order.

8 **C. Access To Designated Material**

9 16. **CONFIDENTIAL Material:** Unless otherwise ordered by the Court or permitted in
 10 writing by the Designating Party, a Receiving Party may disclose any information, document or
 11 thing designated "CONFIDENTIAL" only to:

- 12 (a) employees of the Receiving Party to whom disclosure is reasonably
 13 necessary for the management, supervision, or oversight of this litigation and
 14 who have signed the "Agreement To Be Bound By Protective Order"
 15 attached hereto as Exhibit A;
- 16 (b) persons who appear on the face of Designated Material as an author,
 17 addressee or recipient thereof;
- 18 (c) Counsel of Record;
- 19 (d) Litigation Managers to whom disclosure is reasonably necessary for this
 20 litigation and who have signed the "Litigation Manager Acknowledgement
 21 and Agreement To Be Bound By Protective Order" attached hereto as Exhibit
 22 C;
- 23 (e) Outside Consultants of the Receiving Party to whom disclosure is reasonably
 24 necessary for this litigation and who have signed the "Agreement To Be
 25 Bound By Protective Order" attached hereto as Exhibit A and the
 26 "Certification Of Consultant" attached hereto as Exhibit B;
- 27 (f) witnesses at deposition and/or trial, provided that such witnesses may not
 28 retain copies of Designated Material unless permitted by other provisions of
 29 this Order;
- 30 (g) the Court and its personnel;
- 31 (h) any designated arbitrator or mediator who is assigned to hear this matter, and
 32 his or her staff, who have signed the "Agreement To Be Bound By Protective
 33 Order" attached hereto as Exhibit A and the "Certification Of Consultant"
 34 attached hereto as Exhibit B;
- 35 (i) court reporters; and

1 (j) Professional Vendors to which disclosure is reasonably necessary for this
 2 litigation and a representative of which has signed the "Agreement To Be
 3 Bound By Protective Order" attached hereto as Exhibit A.

4 **17. ATTORNEYS' EYES ONLY Material:** Unless otherwise ordered by the Court or
 5 permitted in writing by the Designating Party, a Receiving Party may disclose any information,
 6 documents, or things designated ATTORNEYS' EYES ONLY Material only to the following in
 7 addition to those identified in Paragraph 29 below regarding use of Designated Material at
 8 depositions:

9 (a) persons who appear on the face of Designated Material as an author,
 10 addressee or recipient thereof;

11 (b) Counsel of Record;

12 (c) Litigation Managers to whom disclosure is reasonably necessary for this
 13 litigation and who have signed the "Litigation Manager Acknowledgement
 14 and Agreement To Be Bound By Protective Order" attached hereto as Exhibit
 15 C.

16 Under this section, disclosure of Defendants' Attorneys' Eyes Only material
 17 may be made to Plaintiff's Litigation Managers, and disclosures of Plaintiff's
 18 Attorneys' Eyes Only material may be made to Defendants' Litigation
 19 Managers. Disclosure of Defendants' Attorneys' Eyes Only material,
 20 however, shall not be allowed to be made to any other Defendant's Litigation
 21 Managers under this section, except as may be agreed to in writing by the
 22 Designating Party.

23 (d) Witnesses at deposition and/or trial, provided that such witnesses may not
 24 retain copies of Designated Material unless permitted by other provisions of
 25 this Order, and that any Party wishing to use such material to examine
 26 persons that are not currently employed by the Producing Party gives
 27 reasonable notice to the Producing Party's counsel at least one week prior to
 28 showing such material to the witness. If the Producing Party objects to the
 use of the material, Counsel wishing to use the material must first obtain
 leave of Court. Counsel for the Producing Party that receives notice under
 this paragraph agrees not to disclose the examining Party's intent to use the
 material to any Party or person that counsel does not represent. Absent
 exceptional circumstances, the term "reasonable notice," as used in this
 paragraph, shall mean at least two (2) business days prior to the start of the
 deposition;

(e) Outside Consultants of the Receiving Party to whom disclosure is reasonably
 necessary for this litigation and who have signed the "Agreement To Be
 Bound By Protective Order" attached hereto as Exhibit A and the
 "Certification Of Consultant" attached hereto as Exhibit B;

(f) the Court and its personnel;

- 1 (g) any designated arbitrator or mediator who is assigned to hear this matter, and
2 his or her staffs, who have signed the “Agreement To Be Bound By
3 Protective Order” attached hereto as Exhibit A and the “Certification Of
4 Consultant” attached hereto as Exhibit B;
- 5 (h) court reporters;
- 6 (i) Professional Vendors to which disclosure is reasonably necessary for this
7 litigation and a representative of which has signed the “Agreement To Be
8 Bound By Protective Order” attached hereto as Exhibit A;
- 9 (j) any other person with the prior written consent of the Producing Party (and, if
10 not the same person or entity, the Designating Party).

18. To the extent that any CONFIDENTIAL or ATTORNEYS' EYES ONLY Material,
9 or any summaries of such Material, is transmitted from or to authorized recipients outside of the
10 Receiving Party's Counsel of Record's office, the transmission shall be Encrypted if the material is
11 in electronic format (e.g., PDF, TIFF, Word, or Excel files). Transmission of CONFIDENTIAL or
12 ATTORNEYS' EYES ONLY Material (regardless whether in paper or Encrypted electronic format)
13 shall be only (a) by hand delivery in sealed envelopes or containers, (b) by outside counsel of record
14 or by a secure transport carrier (e.g., Federal Express) in sealed envelopes or containers, or (c) by e-
15 mail sent directly to an authorized recipient. No Party shall reproduce documents or portions or
16 summaries of documents designated as “CONFIDENTIAL” or “ATTORNEYS' EYES ONLY” in
17 the text of an unencrypted e-mail, but must send such information in an Encrypted attachment.

18. **OUTSIDE COUNSEL RESTRICTED Material:** OUTSIDE COUNSEL
19 RESTRICTED Material shall be clearly identified with the name of the Party or Parties permitted to
20 access such Material, for example, “OUTSIDE COUNSEL RESTRICTED – PLAINTIFF'S
21 COUNSEL ONLY.” Unless otherwise ordered by the Court or permitted in writing by the
22 Designating Party, OUTSIDE COUNSEL RESTRICTED Material shall not be disclosed, directly
23 or indirectly, to anyone except the following (in addition to those identified in paragraph 28 below
24 regarding use of Designated Material at depositions):

- 25 (a) Persons who appear on the face of Designated Material as an author,
26 addressee or recipient thereof, provided that any such person who is not
27 under a present non-disclosure agreement with the Producing Party (and, if
28 not the same person or entity, with the Designating Party) that covers that
document must first sign Exhibit A before viewing the material and that any

viewing must occur in the offices of Counsel of Record for the Receiving Party that is showing the material to the person;

- 1 (b) Outside Counsel of Record;
- 2 (c) Witnesses at deposition and/or trial, provided that such witnesses may not
3 retain copies of Designated Material unless permitted by other provisions of
4 this Order, and that any Party wishing to use such material to examine
5 persons that are not currently employed by the Producing Party, or are a
6 designated 30(b)(6) witness of the Producing Party, or an expert witness of
7 the producing party; gives reasonable notice to the Producing Party's counsel
8 at least one week prior to showing such material to the witness. If the
9 Producing Party objects to the use of the material, Counsel wishing to use the
10 material must first obtain leave of Court. Counsel for the Producing Party
11 that receives notice under this paragraph agrees not to disclose the examining
12 Party's intent to use the material to any Party or person that counsel does not
13 represent. Absent exceptional circumstances, the term "reasonable notice,"
14 as used in this paragraph, shall mean at least two (2) business days prior to
15 the start of the deposition;
- 16 (d) Outside Consultants, subject to the provisions and limitations set forth in
17 Section D herein;
- 18 (e) court reporters;
- 19 (f) The Court and its personnel;
- 20 (g) Professional Vendors to which disclosure is reasonably necessary for this
21 litigation; and
- 22 (h) Any other person with the prior written consent of the Producing Party (and,
23 if not the same person or entity, the Designating Party).

24 To the extent that any OUTSIDE COUNSEL RESTRICTED Material is transmitted from or
25 to authorized recipients outside of the Receiving Party's Counsel of Record's office, the
26 transmission shall be by hand or by a secure transport carrier (e.g., Federal Express) (and Encrypted
27 if the Material is in electronic format).

28 20. Each person to whom Designated Material may be disclosed, and who is required to
sign the "Agreement To Be Bound By Protective Order" attached hereto as Exhibit A and, if
applicable, the "Certification Of Consultant" attached hereto as Exhibit B, shall do so prior to the
time such Designated Material is disclosed to him or her. Counsel for a Party who makes any
disclosure of Designated Material shall retain each original executed certificate and, upon written
request, shall provide copies to counsel for all other parties at the termination of this action.

1 21. At the request of the Designating Party, persons not permitted access to Designated
 2 Material under the terms of this Protective Order shall not be present at depositions while the
 3 Designating Party's Designated Material is discussed or otherwise disclosed. However, persons not
 4 permitted access to Designated Material under the terms of this Protective Order shall be allowed to
 5 be present during all portions of depositions that do not pertain to the Designating Party's
 6 Designated Material, even if such Designated Material is or was discussed during other portions of
 7 that same deposition. Pre-trial and trial proceedings shall be conducted in a manner, subject to the
 8 supervision of the Court, to protect Designated Material from disclosure to persons not authorized
 9 to have access to such Material

10 **D. Access By Outside Consultants**

11 22. Outside consultants or experts (i.e., not existing employees or affiliates of a Party or
 12 an affiliate of a Party) retained for the purpose of this litigation, provided that:

- 13 (1) such consultants or experts are not presently employed by the Parties hereto
 for purposes other than this Action;
- 14 (2) before access is given, the consultant or expert has completed the
 Undertaking attached as Exhibit A hereto and the same is served upon the
 producing Party with:
 - 17 (a) a current curriculum vitae of the consultant or expert;
 - 18 (b) any current or past (within the last four years) professional
 relationship with any of the parties; and
 - 19 (c) a list of other cases in which the individual has testified (at trial or
 deposition) within the last four years.

21 At least five (5) days before access to the Protected Material is to be given to that consultant or
 22 expert, the party proposing the consultant or expert shall provide the above information to give the
 23 producing party the opportunity to object to and notify the receiving Party in writing that it objects
 24 to disclosure of Protected Material to the consultant or expert. The Parties agree to promptly confer
 25 and use good faith to resolve any such objection. If the Parties are unable to resolve any objection,
 26 the objecting Party may file a motion with the Court within fifteen (15) days of the notice, or within
 27 such other time as the Parties may agree, seeking a Protective Order with respect to the proposed

1 disclosure. The objecting Party shall have the burden of proving the need for a Protective Order.
 2 No disclosure shall occur until all such objections are resolved by agreement or Court order.

3 **E. Financial Summaries**

4 23. For the mutual convenience of the Parties, Defendants may generate certain financial
 5 summaries for the purpose of this litigation. All such financial summaries are to be designated
 6 OUTSIDE COUNSEL RESTRICTED, and to the extent that any such financial summaries are
 7 transmitted from or to authorized recipients outside of the Receiving Party's Outside Counsel's
 8 office, the transmission shall be by hand or by a secure transport carrier (e.g., Federal Express).

9 **F. Prosecution Bar**

10 24. Defendants may designate and label Material as "SUBJECT TO PROSECUTION
 11 BAR" if it is also appropriately labeled "ATTORNEYS' EYES ONLY" or "OUTSIDE COUNSEL
 12 RESTRICTED."

13 25. Any attorney representing a Party, whether in house or outside counsel, and any
 14 person associated with a Party who is permitted to receive the other Party's Protected Material that
 15 is designated RESTRICTED – ATTORNEYS' EYES ONLY and SUBJECT TO PROSECUTION
 16 BAR MATERIAL"), who obtains, receives, has access to, or otherwise learns, in whole or in part,
 17 MATERIAL SO DESIGNATED shall not prepare, prosecute, supervise, or assist in the preparation
 18 or prosecution of any patent application pertaining to the field of the invention of the patents-in-suit
 19 on behalf of the receiving Party or its acquirer, successor, predecessor, or other affiliate during the
 20 pendency of this Action and for one year after its conclusion, including any appeals. However, an
 21 attorney or any person associated with a party who reviews MATERIAL SO DESIGNATED may
 22 participate in a reexamination proceeding to defend the validity of a challenged patent, but may not
 23 participate in the crafting of amended claims.

24 **G. Use Of Designated Material**

25 26. **Use Of Designated Material By Receiving Party.** Unless otherwise ordered by the
 26 Court or agreed to in writing by the Parties, all Designated Material and all information derived
 27 therefrom shall be used by the Receiving Party only for purposes of this litigation and shall not be

1 used in any other way whatsoever. Information contained or reflected in Designated Materials shall
 2 not be disclosed in conversations, presentations (by parties, counsel, vendors, experts, consultants,
 3 or otherwise), in Court or in other settings that might reveal Designated Material, except in
 4 accordance with the terms of this Order.

5 **27. Use Of Designated Material By Designating Party.** Nothing in this Order shall
 6 limit any Designating Party's use of its own documents and information, nor shall it prevent the
 7 Designating Party from disclosing its own confidential information, documents or things to any
 8 person. Such disclosure shall not affect any designations made pursuant to the terms of this Order,
 9 so long as the disclosure is made in a manner that is reasonably calculated to maintain the
 10 confidentiality of the information.

11 **28. Use Of Designated Material at Depositions.** Except as may be otherwise ordered
 12 by the Court, and consistent with Paragraphs 16-21 of this Protective Order, any person may be
 13 examined as a witness at depositions and trial and may testify concerning all Designated Material of
 14 which such person has prior knowledge. Without in any way limiting the generality of the
 15 foregoing:

16 (a) A present director, officer, employee, designated Rule 30(6)(b) witness,
 17 and/or Outside Consultant of a Producing Party may be examined and may testify concerning all
 18 Designated Material that has been produced by that Party.

19 (b) A former director, officer, agent and/or employee of a Producing Party may
 20 be interviewed, examined, and may testify concerning all Designated Material of which he or she
 21 has prior knowledge, including any Designated Material that refers to matters of which the witness
 22 has prior knowledge, which has been produced by that Party and which pertains to the period or
 23 periods of his or her prior employment with the Party.

24 (c) Non-parties may be examined or testify concerning any document containing
 25 Designated Material of a Producing Party which appears on its face or from other documents or
 26 testimony to have been received from or communicated to the non-party as a result of any contact or
 27 relationship with the Producing Party, or a representative of such Producing Party. Any person

1 other than the witness, his or her attorney(s), and any person qualified to receive Designated
2 Material under this Order shall be excluded from the portion of the examination concerning such
3 information, unless the Producing Party (and, if not the same person or entity, the Designating
4 Party) consents to persons other than qualified recipients being present at the examination. If the
5 witness is represented by an attorney who is not qualified under this Order to receive such
6 information, then prior to the examination, the attorney shall be requested to provide a
7 Confidentiality Agreement, in the form of Exhibit A hereto, that he or she will comply with the
8 terms of this Order and maintain the confidentiality of Designated Material disclosed during the
9 course of the examination. In the event that such attorney declines to sign such an Agreement To
10 Be Bound By Protective Order, prior to the examination, the parties, by their attorneys, shall jointly
11 seek a protective order from the Court prohibiting such attorney from disclosing such Designated
12 Material.

13 (d) A witness who previously had access to a document designated
14 “CONFIDENTIAL”, “ATTORNEYS’ EYES ONLY” or “OUTSIDE COUNSEL RESTRICTED”
15 but who is not under a present non-disclosure agreement with the Producing Party (and, if not the
16 same person or entity, the Designating Party) that covers that document, may be shown the
17 document if the witness is advised on the record of the existence of the Protective Order and that the
18 Protective Order requires the parties to keep confidential any questions, testimony or documents
19 that are designated as “CONFIDENTIAL”, “ATTORNEYS’ EYES ONLY”, or “OUTSIDE
20 COUNSEL RESTRICTED”. Such witnesses may not copy, take notes on or retain copies of any
21 Designated Material used or reviewed at the deposition. Such witness may not take out of the
22 deposition room any exhibit that is marked “CONFIDENTIAL”, “ATTORNEYS’ EYES ONLY” or
23 “OUTSIDE COUNSEL RESTRICTED”. The Producing Party (and, if not the same person or
24 entity, the Designating Party) of any Designated Material used at the deposition may also require
25 that the transcript and exhibits not be copied by such witness or his counsel, that no notes may be
26 made of the transcript or the exhibits, and that the transcript and exhibits may only be reviewed by
27 such witness in the offices of counsel representing a Party in this case (or another firm acting for

1 counsel representing a Party in his case and under the supervision of one of the lawyers who is
 2 bound by the terms of this Order).

3 **H. Procedure for Designating Materials**

4 Subject to the limitations set forth in this Order, (a) a Designating Party may designate as
 5 “CONFIDENTIAL” information the Designating Party believes in good faith meets the definition
 6 set forth in Paragraph 3 above; (b) a Designating Party may designate as “ATTORNEYS’ EYES
 7 ONLY” information the Designating Party believes in good faith meets the definition set forth in
 8 Paragraph 4 above; (c) a Designating Party may designate as “OUTSIDE COUNSEL
 9 RESTRICTED” information the Designating Party believes in good faith meets the definition set
 10 forth in Paragraph 5 above; and (d) a Designating Party may designate as “SUBJECT TO
 11 PROSECUTION BAR” information the Designating Party believes in good faith meets the
 12 definition set forth in Paragraph 24 above.

13 29. Designation in conformity with this Order requires:

14 (a) For information in documentary form (apart from transcripts of depositions
 15 or other pretrial or trial proceedings), the Producing Party shall affix the legend
 16 “CONFIDENTIAL”, “ATTORNEYS’ EYES ONLY”, or “OUTSIDE COUNSEL RESTRICTED”
 17 and, if appropriate, “SUBJECT TO PROSECUTION BAR”, on each page that contains Designated
 18 Material. For documents produced in native format, the legend shall be placed in the filename of
 19 each document or otherwise clearly designated.

20 (b) For testimony given in deposition or in other pretrial or trial proceedings (in
 21 this and in other actions, as applicable), the Designating Party shall specify any portions of the
 22 testimony that it wishes to designate as “CONFIDENTIAL”, “ATTORNEYS’ EYES ONLY”, or
 23 “OUTSIDE COUNSEL RESTRICTED” and, if appropriate, “SUBJECT TO PROSECUTION
 24 BAR”. In the case of depositions, the Designating Party may also designate any portion of a
 25 deposition transcript as “CONFIDENTIAL”, “ATTORNEYS’ EYES ONLY”, or “OUTSIDE
 26 COUNSEL RESTRICTED” and, if appropriate, “SUBJECT TO PROSECUTION BAR”, by
 27 informing the reporter and all Parties in writing within thirty (30) calendar days of completion of
 28

the deposition of the designations to be applied. All deposition transcripts not marked during the deposition will nonetheless be treated as “OUTSIDE COUNSEL RESTRICTED” until the thirty (30) day period has expired. Transcript pages containing Designated Material must be separately bound by the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL”, “ATTORNEYS’ EYES ONLY” or “OUTSIDE COUNSEL RESTRICTED”, as instructed by the Designating Party. The Parties will work together reasonably to attempt to reach an agreeable arrangement for making such designations and/or objections to exhibits, testimony, and other Material used during any pre-trial proceedings and during the trial of this case. The parties will advise the Court at the Pre-Trial Conference or other appropriate time as to a proposal to designate and/or object to the designation of exhibits, testimony, and/or other Material used during any pre-trial proceedings and during the trial of this case and seek approval and/or clarification from the Court as to the manner in which the Court wants the Parties to proceed.

(c) For information produced in some form other than documentary, and for any other tangible items, the Producing Party shall affix in a prominent place on the exterior of the container or containers in which the information or thing is stored the legend "CONFIDENTIAL", "ATTORNEYS' EYES ONLY" or "OUTSIDE COUNSEL RESTRICTED" where applicable and, "SUBJECT TO PROSECUTION BAR".

I. No Waiver of Privilege

30. Inspection or production of documents (including physical objects) shall not constitute a waiver of the attorney-client privilege or, work product immunity or any other applicable privilege or immunity from discovery if after the Producing Party becomes aware of any inadvertent or unintentional disclosure, the Producing Party designates any such documents as within the attorney-client privilege, work product immunity, and/or any other applicable privilege or immunity and requests in writing return of such documents to the Producing Party. Upon request by the Producing Party, the Receiving Party shall immediately retrieve and return any and all copies of such inadvertently produced document(s), including retrieving and returning any and all copies distributed to others (e.g., experts, consultants, vendors). Nothing herein shall prevent the

1 Receiving Party from challenging the propriety of the attorney-client privilege or, work product
 2 immunity or other applicable privilege or immunity designation by submitting a written challenge to
 3 the Court; however, the fact of the inadvertent production of the document(s) may not be used as a
 4 basis for such challenge. A Receiving Party may not retain any copies of any inadvertently
 5 produced document for any purpose, including the purpose of challenging the propriety of the
 6 attorney-client privilege, work product immunity and/or other applicable privilege or immunity
 7 designation; however, the Producing Party must add the document to a privilege log.

8 **J. Inadvertent Failure To Designate**

9 31. An inadvertent failure to designate qualified information, documents, or things as
 10 “CONFIDENTIAL”, “ATTORNEYS’ EYES ONLY”, “OUTSIDE COUNSEL RESTRICTED,” or
 11 “SUBJECT TO PROSECUTION BAR” does not, standing alone, waive the Designating Party’s
 12 right to secure protection under this Order for such Material. Upon discovery of an inadvertent
 13 failure to designate, a Producing Party may notify the Receiving Party in writing that the Material is
 14 to be designated as “CONFIDENTIAL”, “ATTORNEYS’ EYES ONLY”, or “OUTSIDE
 15 COUNSEL RESTRICTED” and if appropriate, “SUBJECT TO PROSECUTION BAR”. Upon
 16 receipt of such notice, the Receiving Party must make all reasonable efforts to assure that the
 17 Material is treated in accordance with the terms of this Order, subject to the right to challenge the
 18 propriety of such designation(s). The Producing Party shall provide substitute copies of documents
 19 bearing the confidentiality designation. Any Receiving Party will also make all reasonable efforts
 20 to retrieve any documents from anyone who had received the documents prior to the notification to
 21 the Receiving Party of the inadvertent failure to designate and who is no longer permitted to access
 22 the documents under the new designation.

23 **K. Filing Designated Material**

24 32. Without written permission from the Designating Party or a Court Order secured
 25 after appropriate notice to all interested persons, a Party may not file in the public record in this
 26 action any Designated Material, but must file such Designated Material under seal in conformance
 27 with the Court’s rules and procedures.

1 **L. Challenges to Confidentiality Designations**

2 33. The parties will use their best efforts to appropriately designate, documents, or
 3 information as “CONFIDENTIAL”, “ATTORNEYS’ EYES ONLY”, “OUTSIDE COUNSEL
 4 RESTRICTED”, and “SUBJECT TO PROSECUTION BAR”. Nothing in this Order shall prevent
 5 a Receiving Party from contending that any or all documents or information designated as
 6 CONFIDENTIAL Material, ATTORNEYS’ EYES ONLY Material, or OUTSIDE COUNSEL
 7 RESTRICTED Material and SUBJECT TO PROSECUTION BAR Material have been improperly
 8 designated. A Receiving Party may at any time request that the Producing Party (or, if not the same
 9 person or entity, the Designating Party) cancel or modify the confidentiality designation with
 10 respect to any document or information contained therein, subject to the procedure in Paragraph 43.

11 34. A Party shall not be obligated to challenge the propriety of a “CONFIDENTIAL”,
 12 “ATTORNEYS’ EYES ONLY” or “OUTSIDE COUNSEL RESTRICTED” and “SUBJECT TO
 13 PROSECUTION BAR” designation at the time made, and the failure to do so shall not preclude a
 14 subsequent challenge thereto. Such a challenge shall be written, shall be served on counsel for the
 15 Producing Party (and, if not the same person or entity, the Designating Party), and shall particularly
 16 identify by Bates number and set forth for each such document the specific reason the Receiving
 17 Party believes the designation is improper for the document that the Receiving Party contends
 18 should be designated differently. The parties shall use their best efforts to promptly resolve such
 19 disputes by formally holding a meet and confer by telephone (voice mail messages are insufficient)
 20 or in person. If the parties cannot reach agreement, the Receiving Party shall request that the Court
 21 cancel or modify a “CONFIDENTIAL”, “ATTORNEYS’ EYES ONLY”, or “OUTSIDE
 22 COUNSEL RESTRICTED” and if applicable, “SUBJECT TO PROSECUTION BAR” designation.
 23 In any dispute raised with this Court, the Receiving Party objecting to the designation shall bear the
 24 burden of showing that the challenged designation was appropriate.

25 **M. Protected Material Subpoenaed Or Ordered Produced In Other Litigation**

26 35. If a Receiving Party is served with a subpoena or a Court order that would compel
 27 disclosure of any information, documents or things designated in this action as “CONFIDENTIAL”,
 28

1 “ATTORNEYS’ EYES ONLY” or “OUTSIDE COUNSEL RESTRICTED”, the Receiving Party
 2 must promptly notify the Designating Party in writing (by fax and/or email), before any compliance
 3 under such subpoena or Court order is required. Such notification must include a copy of the
 4 subpoena or order. The Receiving Party also must promptly inform in writing the party who caused
 5 the subpoena or order to issue that some or all of the Material covered by the subpoena or order is
 6 the subject of this Protective Order. In addition, the Receiving Party must promptly deliver a copy
 7 of this Protective Order to the Party in the other action that caused the subpoena or order to issue.
 8 The Designating Party shall bear the burdens and the expenses of seeking protection in that Court of
 9 its Designated Material. Nothing in these provisions should be construed as authorizing or
 10 encouraging a Receiving Party in this action to disobey a lawful directive from another Court.

11 **N. Unauthorized Disclosure Of Designated Material**

12 36. If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
 13 Designated Material to any person or in any circumstance not authorized under this Order, the
 14 Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized
 15 disclosures, (b) use its best efforts to retrieve all copies of the Designated Material, (c) inform the
 16 person or persons to whom unauthorized disclosures were made of all the terms of this Order, and
 17 (d) request such person or persons to execute the “Acknowledgment and Agreement to Be Bound”
 18 that is attached hereto as Exhibit A.

19 **O. Non-Party Use Of This Protective Order**

20 37. A non-party producing information or Material voluntarily or pursuant to a subpoena
 21 or a Court order may designate such Material or information in the same manner and shall receive
 22 the same level of protection under this Protective Order as any Party to this lawsuit.

23 38. A non-party’s use of this Protective Order to protect its “CONFIDENTIAL”
 24 Material, “ATTORNEYS’ EYES ONLY” Material, or “OUTSIDE COUNSEL RESTRICTED”
 25 Material does not entitle that nonparty access to “CONFIDENTIAL” Material, “ATTORNEYS’
 26 EYES ONLY” Material, or “OUTSIDE COUNSEL RESTRICTED” Material produced by any
 27 Party in this case.

1 **P. Discovery From Outside Consultants**

2 39. Testifying experts shall not be subject to discovery of any draft of his or her report in
 3 this case or other cases, and such draft reports, notes, or outlines for draft reports are also exempt
 4 from discovery.

5 40. Discovery of Materials provided to testifying experts shall be limited to those
 6 materials, facts, consulting expert opinions, and other matters actually relied upon by the testifying
 7 expert in forming his or her final report, trial, or deposition testimony or any opinion in this case.
 8 No discovery can be taken from any consulting expert who does not testify except to the extent that
 9 consulting expert has provided information, opinions, or other materials to a testifying expert, who
 10 then relies upon such information, opinions, or other materials in forming his or her final report,
 11 trial, or deposition testimony or any opinion in this case.

12 41. No conversations or communications between counsel and any testifying or
 13 consulting expert will be subject to discovery unless the conversations or communications are relied
 14 upon by such experts in formulating opinions that are presented in reports or trial or deposition
 15 testimony in this case.

16 42. Materials, communications, and other information exempt from discovery under the
 17 foregoing paragraphs shall be treated as attorney-work product for the purposes of this litigation and
 18 Protective Order.

19 **Q. Duration**

20 43. Even after the termination of this action, the confidentiality obligations imposed by
 21 this Order shall remain in effect until a Designating Party agrees otherwise in writing or a Court
 22 order otherwise directs.

23 **R. Final Disposition**

24 44. Unless otherwise ordered or agreed in writing by the Producing Party, within sixty
 25 (60) calendar days after the final disposition of this action, each Receiving Party must destroy or
 26 return all Designated Material to the Producing Party. As used in this paragraph, "all Designated
 27 Material" includes all copies, abstracts, compilations, summaries or any other form of reproducing

1 or capturing any of the Designated Material. The Receiving Party must submit a written
 2 confirmation of the return or destruction to the Producing Party (and, if not the same person or
 3 entity, to the Designating Party) by the 60-day deadline.

4 45. Notwithstanding Paragraph 44, Counsel of Record may retain an archival copy of all
 5 pleadings, motion papers, any documents or materials filed or used in Court, exhibits offered or
 6 introduced into evidence at trial, legal memoranda, correspondence, or attorney work product, even
 7 if such materials contain Designated Material. Counsel of Record may also retain an archival copy
 8 of deposition transcripts (including exhibits), expert reports (including exhibits), discovery requests
 9 and responses (including exhibits), even if such materials contain Designated Material.

10 46. Each Defendant may retain an archived copy of all pleadings, motion papers, expert
 11 reports (including exhibits), deposition transcripts (including exhibits) of its own current and former
 12 employees and experts, documents or materials filed or used in Court, exhibits offered or introduced
 13 into evidence at trial, legal memoranda, correspondence, discovery requests and responses or
 14 attorney work product, but only to the extent that such materials do not contain any Designated
 15 Material of another Defendant or such Designated Material has been redacted.

16 47. Any archival copies that contain or constitute Designated Material remain subject to
 17 this Protective Order as set forth in paragraph 43 above.

18 S. **Miscellaneous**

19 48. Any of the notice requirements herein may be waived, in whole or in part, but only
 20 by a writing voluntarily and explicitly agreeing to such waiver signed by the Counsel of Record for
 21 the Party against whom such waiver will be effective.

22 49. This Order is entered without prejudice to the right of any Party to apply to the Court
 23 at any time for additional protection or to relax or rescind the restrictions of this Order, when
 24 convenience or necessity requires. No Party waives any right it otherwise would have to object to
 25 disclosing or producing any information, documents, or things on any ground not addressed in this
 26 Protective Order. Similarly, no Party waives any right to object on any ground to the use in

1 evidence of any of the Material covered by this Protective Order. The Court shall take appropriate
 2 measures to protect Designated Material at trial and any hearing in this case.

3 50. This Order shall not diminish any existing obligation or right with respect to
 4 Designated Material, nor shall it prevent a disclosure to which the Designating Party consents in
 5 writing before the disclosure takes place.

6 51. The United States District Court for the Northern District of California is responsible
 7 for the interpretation and enforcement of this Protective Order. All disputes concerning Designated
 8 Material produced under the protection of this Protective Order shall be resolved by the United
 9 States District Court for the Northern District of California. Every individual who receives any
 10 Designated Material agrees to subject himself or herself to the jurisdiction of this Court for the
 11 purpose of any proceedings related to performance under, compliance with, or violation of this
 12 Order.

13 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

14 Dated: December 13, 2012 **MORRIS, MANNING & MARTIN LLP**

16 By: /s/ Bryan Harrison
 3343 Peachtree Road, N.E., Suite 1600
 17 Atlanta, GA 30326-1044
 18 Ph: 404-504-233-7000
 Fx: 404-365-9532
 19 bgh@mmmlaw.com

20 *Attorneys for Plaintiff Optimum Power Solutions LLC*

21 Dated: December 13, 2012 **AMSTER ROTHSTEIN & EBENSTEIN LLP**

23 By: /s/ Joseph Casino
 90 Park Avenue, 21st Floor
 24 New York, NY 10016
 Telephone: (212) 336-8028
 25 Facsimile: (212) 336-8001
jcasino@arelaw.com

27 *Attorneys for Defendant Panasonic Corporation of
 North America*

1 Dated: December 13, 2012

FUTTERMAN DUPREE DODD CROLEY MAIER LLP

2
3 By: /s/ Jamie L. Dupree
4 180 Sansome Street, 17th Floor
5 San Francisco, CA 94104
6 Telephone: (415) 399-3843
7 Facsimile: (415) 399-3838
8 jdupree@fddcm.com

*Local Counsel for Defendant Panasonic Corporation of
North America*

9
10 **CERTIFICATION**

11 I, Jamie L. Dupree, am the ECF User whose identification and password are being used to
12 file this Stipulated Protective Order and [Proposed] Protective Order. In compliance with Local
13 Rule 5-1(i), I hereby attest that concurrence in the filing of this document has been obtained from
14 each of the other signatories.

15 Dated: December 13, 2012

/s/ Jamie L. Dupree
16 Jamie L. Dupree

*Local Counsel for Defendant Panasonic Corporation of
North America*

17
18 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

19 Dated: 12/17/2012

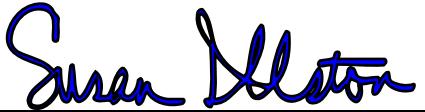
20
21 
22 SUSAN ILLSTON
23 UNITED STATES DISTRICT JUDGE

EXHIBIT A

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND
BY PROTECTIVE ORDER**

I, _____ [print or type full name], state:

1. I reside at _____;

2. My present employer is _____

3. My present occupation or job description is _____

4. I agree to keep confidential all information provided to me in the matter of *Optimum Power Solutions LLC v. Panasonic Corporation of North America*, Civil Action No. 3:12-cv-03123 SI in the United States District Court for the Northern District of California, San Francisco Division, and to be subject to the authority of that Court in the event of any violation or dispute related to this agreement.

5. I have been informed of and have reviewed the Protective Order entered in this case, and I will not divulge any information, documents or things that are subject to the Protective Order except in accordance with the provisions of the Order;

6. I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____

[printed name]

[signature]

EXHIBIT B

CERTIFICATION OF CONSULTANT

I, _____ [print or type full name], of _____ am not an employee of the Party who retained me, or of a competitor of a Party in this action. If at any time after I execute this Certificate of Consultant and during the pendency of the Action I become an employee of a Party or a competitor of a Party, I will promptly inform the counsel for the Party who retained me in the Action, and I will not thereafter review any Designated Materials marked by any Party as "ATTORNEYS' EYES ONLY" or "OUTSIDE COUNSEL RESTRICTED" unless and until the Parties agree or the Court orders otherwise. Nothing in the foregoing precludes a Designating Party from sharing its own Designated Materials with its consultants or employees.

I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____

[printed name]

[signature]

EXHIBIT C

LITIGATION MANAGER ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____ [print or type full name], state:

1. I reside at _____;

2. My present employer is _____

3. I am a Litigation Manager;

4. I agree to keep confidential all information provided to me in the matter of *Optimum Power Solutions LLC v. Panasonic Corporation of North America*, Civil Action No. 3:12-cv-03123 SI in the United States District Court for the Northern District of California, San Francisco Division, and to be subject to the authority of that Court in the event of any violation or dispute related to this agreement.

5. I have been informed of and have reviewed the Protective Order entered in this case, and I will not divulge any information, documents, or things that are subject to the Protective Order except in accordance with the provisions of the Order;

6. I state under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____

[printed name]

[signature]